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CITY OF LOS ANGELES, LOS ANGELES POLICE DEPARTMENT,  
DETECTIVE R. ULLEY and DETECTIVE J. VANDER HORCK

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCO MILLA an individual,  
  
Plaintiff,

v.

CITY OF LOS ANGELES a municipal  
entity; LOS ANGELES POLICE  
DEPARTMENT, a municipal entity;  
COUNTY OF LOS ANGELES,  
DETECTIVE R. ULLEY AND  
DETECTIVE J. VANDER HORCK, and  
DOES 1 through 100, inclusive,  
  
Defendants.

Case No. 16-cv-00134-FWS-MRW

**DEFENDANTS' MOTION IN LIMINE  
NO. 7 TO EXCLUDE EVIDENCE  
REGARDING FINDING OF  
FACTUAL INNOCENCE AND  
LATER ACQUIRED EVIDENCE**

[Filed concurrently with Declaration of  
Kevin E. Gilbert; Proposed Order]

PTC: May 5, 2023  
TIME: 9:00 a.m.  
DEPT: Courtroom 10D  
JUDGE: Hon. Fred W. Slaughter  
TRIAL: May 16, 2023

1 TO THIS HONORABLE COURT, PLAINTIFF & HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Pursuant to Federal Rules of Evidence 104, 401,  
3 402, 403, 801 et seq. and FRCP Rule 16 ( c)(2)(A)(C)(J)(O)(P) Defendants CITY OF  
4 LOS ANGELES, LOS ANGELES POLICE DEPARTMENT, DETECTIVE R. ULLEY  
5 and DETECTIVE J. VANDER HORCK (hereinafter “Defendants”) hereby request this  
6 Honorable Court on May 5, 2023, at 9:00 a.m., or as soon thereafter as this Court may  
7 hear said motion, and issue an order granting MIL No. 7<sup>1</sup>, to exclude evidence regarding  
8 Los Angeles County Superior Court’s ruling finding Plaintiff factually innocent and any  
9 other similar later acquired evidence, as follows:

10 1. Precluding all evidence, references, argument and testimony by Plaintiff, his  
11 attorneys and witnesses regarding Los Angeles County Superior Court’s ruling finding  
12 Plaintiff factually innocence and all evidence related thereto after Plaintiff was convicted,  
13 such as testimony from Salvador Pimentel, Maria Flores, and Sandra Jauregui who  
14 refused to come forward or speak with Defendants until after Plaintiff was convicted.

15 2. Requiring Plaintiff to instruct his witnesses not to mention anything related  
16 to Los Angeles County Superior Court’s ruling finding Plaintiff factually innocent and  
17 any later acquired evidence after Plaintiff was convicted; and

18 3. If the Court is inclined to allow this type of evidence at trial, that the Court  
19 hold a hearing pursuant to Federal Rule of Evidence 104.

20 This motion is made upon grounds that such evidence is irrelevant, highly  
21 prejudicial, and would confuse and mislead the jury and waste time and should be  
22 excluded. Fed. R. Evid. 401, 402, 403, 801.

23 This motion is based upon this Notice, the attached Memorandum of Points and  
24 Authorities, Declaration of Kevin E. Gilbert and any further evidence that may be  
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26 <sup>1</sup> While this Motion is similar to Defendants’ Motion *in Limine* No. 7, this Motion seeks  
27 slightly different relief, specifically seeking to exclude any evidence that came forward  
28 after Plaintiff’s conviction, including the finding of factual innocence, as none of this  
evidence was known to Detectives at the time of their investigation of Plaintiff and as  
such is irrelevant, highly prejudicial, and would lead to jury confusion.

presented at the hearing on the motion. Pursuant to this Court's Civil Order regarding Pretrial and Trial Procedures, counsel for both parties have been in continuous discussions regarding trial filings in this matter, including the subject of this motion in limine. However, notwithstanding those meet and confer efforts, the parties were unable to agree that this evidence should be excluded and as such this motion is necessary.

Dated: April 13, 2023

Respectfully submitted,

**ORBACH HUFF + HENDERSON LLP**

By: /s/ Kevin E. Gilbert

Kevin E. Gilbert

Carolyn M. Aguilar

Attorneys for Defendants

CITY OF LOS ANGELES, LOS ANGELES

POLICE DEPARTMENT, DETECTIVE R.

ULLEY and DETECTIVE J. VANDER HORCK

ORBACH HUFF + HENDERSON LLP

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendants CITY OF LOS ANGELES, LOS ANGELES POLICE DEPARTMENT, DETECTIVE R. ULLEY and DETECTIVE J. VANDER HORCK (hereinafter “Defendants”) request an order *in limine* pursuant to Federal Rules of Evidence (hereinafter “FRE”), Rules 402, 403, and 801 precluding any testimony, evidence, or other reference to the finding of factual innocence (and post-conviction related evidence thereto, including testimony or evidence from Salvador Pimentel, Maria Flores, and Sandra Jauregui) of Plaintiff MARCO MILLA (“Plaintiff”), as this evidence is completely irrelevant to the claims against Defendants and would be highly prejudicial to their right to a fair trial.

Defendants believe that Plaintiff will seek to introduce evidence and argument pertaining to Plaintiff’s finding of factual innocence and evidence related thereto that led to the overturning of Plaintiff’s conviction. It is undisputed that Detectives Ulley and Vander Horck (“Detectives”) did not know and could not have known this information in the 2001-2002 timeframe, and as such it has no relevance to Plaintiff’s claims in this lawsuit. Plaintiff’s guilt or innocence similarly has no relevance to the issues in this lawsuit and will only serve to confuse the jury. Defendants respectfully request that the Court issue an order excluding any such evidence or argument from the jury. This evidence, at a minimum, should be excluded in the first phase of trial addressing the determination of liability.

**II. STATEMENT OF FACTS**

In 2002, Plaintiff Marco Milla (“Plaintiff”) was convicted of the murder of Robert Hightower (“Hightower”) and the attempted murder of several others for a shooting that occurred on September 29, 2001 in Los Angeles. Subsequent to his conviction and incarceration, a witness, Salvador Pimentel (“Pimentel”), came forward in or around 2010 claiming he had proof that Plaintiff did not commit the shootings. Pimentel further asserted that Julio Munoz (aka “Downer”) was the actual shooter. Similarly, Plaintiff’s

1 girlfriend, Sandra Jauregui, although known to Defendants at the time of Plaintiff's  
2 investigation, refused to speak with any Detective to corroborate Plaintiff's alleged alibi.  
3 Using Pimentel's testimony, together with a new witness's testimony (Maria Flores) and  
4 the testimony from Plaintiff's girlfriend, Plaintiff filed a writ of habeas corpus which was  
5 ultimately granted, leading to Plaintiff's conviction being overturned. Plaintiff then filed  
6 this action one year later, alleging Defendants unlawfully imprisoned and maliciously  
7 prosecuted Plaintiff.

8 In September of 2001, Defendants Richard Ulley and John Vander Horck  
9 ("Detectives") were assigned to investigate the Hightower murder. Plaintiff alleges that  
10 the Detectives used coercive interviewing and line-up tactics to identify him as the  
11 shooter and failed to investigate his alibi. In reality, the Detectives did nothing wrong  
12 and reasonably believed that Plaintiff was the involved shooter, not only because he was  
13 positively identified by multiple witnesses, but because he fit the description of the  
14 shooter, appeared to have motive (gang membership and the racially motivated crime),  
15 had access to weapons (prior arrests and gun cases and ammunition found at his house),  
16 was associated with the gang in that area, and was not in custody at the time of the crime.  
17 Ultimately, the Detectives were unaware of the new evidence that came to light only after  
18 Plaintiff was convicted and incarcerated.

19 Importantly, the finding of Plaintiff's factual innocence and the testimony from  
20 Pimentel and others that came *after* Plaintiff was incarcerated are entirely irrelevant to  
21 the issues in this case, as the Detectives were unaware of Munoz's potential involvement  
22 at the time of the investigation. As such, Plaintiff should be precluded from producing  
23 any of the evidence relating to the finding of factual innocence, including testimony from  
24 Maria Flores and Salvador Pimentel or any other witnesses that were not provided to the  
25 Detectives at the time of the investigation.

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### III. EVIDENCE ACQUIRED AFTER PLAINTIFF WAS CONVICTED IS IRRELEVANT

Federal Rule of Evidence 401 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule of Evidence 402 establishes that while all relevant evidence is admissible, “Evidence which is not relevant is not admissible.” The relevant inquiry in this case is whether the Detectives had probable cause to arrest Plaintiff, and that in turn is based upon the totality of circumstances known to the Detectives at the time of Plaintiff’s arrest. Consequently, evidence discovered subsequent to the investigation and Plaintiff’s arrest, such as testimony from Pimentel, Flores, and Jauregui that Munoz was the shooter, and not known to the Detectives is necessarily irrelevant.

“To determine whether an officer had probable cause for an arrest, ‘we examine the events leading up to the arrest, and then decide ‘whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to’ probable cause.’” *D.C. v. Wesby*, 138 S. Ct. 577, 586 (2018), citing *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)). “Because probable cause ‘deals with probabilities and depends on the totality of the circumstances,’ [citations] it is ‘a fluid concept’ that is ‘not readily, or even usefully, reduced to a neat set of legal rules.’” *Wesby*, 138 S. Ct. at 586, citing *Pringle, supra*; *Illinois v. Gates*, 462 U.S. 213, 232 (1983). Probable cause “requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Id.* at 243–244, n. 13. “Probable cause ‘is not a high bar.’” *Wesby*, 138 S. Ct. at 586, citing *Kaley v. United States*, 134 S. Ct. 1090, 1103 (2014).

In this case, it is irrelevant what evidence later came out overturning Plaintiff’s conviction. The important issue here is whether the Detectives lacked probable cause to believe Plaintiff murdered Hightower at the time of the investigation – not that Plaintiff turned out to be innocent. None of the information that led to the overturning of

Plaintiff's conviction was known to the Detectives at the time of the investigation. As such, it does nothing to establish whether the Detectives had probable cause to arrest Plaintiff. In large part, most of this evidence was hidden from them by Plaintiff, his alibi witnesses (like his girlfriend who refused to speak with the Detectives) or because witnesses did not come forward until years after Plaintiff's incarceration. Both Maria Flores and Salvador Pimentel admit that they would not have spoken to the police about this information in 2001 out of concern for their own safety and retaliation by members of the 204th St. gang. As a result, the Detectives did not have this information when they investigated Plaintiff in 2001-2002 and it is completely irrelevant to the issues in this case and must be excluded.

#### **IV. EVIDENCE ACQUIRED AFTER PLAINTIFF WAS CONVICTED IS PREJUDICIAL AND CONFUSING**

Assuming for the moment that evidence of Plaintiff's factual innocence and testimony that someone else murdered Hightower is relevant to the present case, it may nonetheless be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Federal Rule of Evidence 403 provides:

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or a needless presentation of cumulative evidence.”

Rule 403 requires the prejudice be “unfair.” *U.S. v. Young* (D.S.D. 1990) 754 F.Supp. 739, 742. “Unfair” in this context means the evidence has an undue tendency to suggest a jury decision based upon an improper basis, usually an emotional one. *Young*, supra, 754 F. Supp. at 742. Additionally, where evidence is not closely related to the issue being charged and is otherwise irrelevant, the probative value of such evidence is substantially outweighed by the danger of unfair prejudice. *U.S. v. Guerrero* (9th Cir. 1984) 756 F.2d 1342, 1348; *U.S. v. Black* (9th Cir. 1994) 20 F.3d 1458, 1464.

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1 Plaintiff may argue that because he was found to be factually innocent, Defendants  
2 violated his rights when conducting the murder investigation. It is undisputed that  
3 Detectives Ulley and Vander Horck had no way of knowing that a court would find  
4 Plaintiff factually innocent of the crime years later. Plaintiff's guilt or innocence is not at  
5 issue in this litigation. Because Federal Rules of Evidence Rule 402 provides that  
6 irrelevant evidence is not admissible, this Court should exclude any such evidence or  
7 argument because it has no relevance as to whether there was a violation of Plaintiff's  
8 constitutional rights.

9 If the jury were to hear argument or evidence that Plaintiff was found factually  
10 innocent – and similar evidence or testimony from witnesses that came forward years  
11 after Plaintiff was convicted - it would unnecessarily inflame the passions of the jury.  
12 Whether or not the jury finds any wrongdoing on behalf of Defendants, there will be a  
13 strong temptation to assign liability in order to compensate Plaintiff for the time he was  
14 incarcerated. Therefore, even assuming such evidence was relevant, it must be excluded  
15 under Rule 403. Moreover, requiring the parties to address the actual innocence or guilt  
16 of Plaintiff would essentially result in an unnecessary and time-consuming retrial of the  
17 criminal case, which would unduly delay the trial of this matter. Furthermore, the jury is  
18 likely to be confused as to whether the Defendants *should* have known of this  
19 information, even though they were never given the information. This is not the standard  
20 by which the Detectives will be judged, and such will unfairly prejudice Defendants in  
21 the eyes of the jury. Accordingly, this evidence must be excluded in its entirety.

## 22 **V. CONCLUSION**

23 For the foregoing reasons, Defendants respectfully request that this Court preclude  
24 all evidence, references, argument and testimony by Plaintiff, his attorneys and witnesses  
25 regarding the Los Angeles County Superior Court's ruling finding Plaintiff factually  
26 innocent and any evidence related thereto, including any testimony from Salvador  
27 Pimentel, Maria Flores, and Sandra Jauregui. If the Court is inclined to allow this type of

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questioning or evidence, defendants request an offer of proof of other alleged incident and a hearing under Federal Rules of Evidence 104.

Dated: April 13, 2023

Respectfully submitted,

**ORBACH HUFF + HENDERSON LLP**

By: /s/ Kevin E. Gilbert

Kevin E. Gilbert

Carolyn M. Aguilar

Attorneys for Defendants

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